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2 **IN THE UNITED STATES DISTRICT COURT**
3 **FOR THE DISTRICT OF MASSACHUSETTS**

4 ARcare, Inc., on behalf of itself and all
5 others similarly situated,

6 Plaintiff,

7 No. 1:16-cv-11547-DPW

8 v.

9 Cynosure, Inc.,

10 Defendant.

11 **SUPPLEMENTAL DECLARATION OF ZACHARY COOLEY**
12 **RE: NOTICE PROCEDURES**

13 I, Zachary Cooley, declare as follows:

14 1. I am employed as a Project Manager by KCC Class Action Services, LLC
15 ("KCC"), located at 462 South 4th Street, Louisville, KY 40202. KCC was appointed as the
16 Settlement Administrator in this matter and is not a party to this action. I have personal
17 knowledge of the facts set forth herein and, if called as a witness, could and would testify
18 competently thereto.

19 2. This declaration supplements my previous declaration for the purpose of updating
20 the Court and the Parties on administration activities.

21 **Claim Forms Received**

22 3. To date, KCC has received 12,204 timely claim forms submitted and 46 late claim
23 forms. KCC has completed the processing of all claims received to date. Of the 12,250 received
24 claims, 6,851 claims have one or more valid faxes claimed. These 6,851 claims have claimed
25 7,624 total valid fax numbers. Of the 6,851 valid claims, 401 have claimed two or more valid fax
26 numbers.

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2 **Preliminary Settlement Award Calculations**

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4 4. KCC has preliminarily calculated the Class Member settlement awards for the
 5 6,851 class members. These calculations are based on the assumptions that the gross settlement
 6 amount is \$8,500,000.00 and, from that amount, deductions are made for: (a) attorneys' fees costs
 7 (\$2,125,000.0); (b) attorneys' costs (unknown at this time); (c) named plaintiff award
 8 (\$5,000.00); and (c) administration costs (\$264,556.00 - \$281,895.00) (see administration costs
 9 section below). The remaining amount (\$6,105,444.00 - \$6,088,105.00 the "Net Settlement
 10 Fund") will be allocated pursuant to the terms of the settlement to those Class Members who filed
 11 claims with valid fax numbers. Currently, the payment per valid fax is calculated to be between
 12 \$805.52 and \$807.81 (Net Settlement Amount / Unique Valid Faxes Claimed (7,558)). In the
 13 event a valid fax was claimed by more than one entity, the payment amount for the valid fax will
 14 be split equally amongst all parties claiming said valid fax. Should the Court-awarded fees or
 15 costs differ than those shown above or if the list of Class Members approved for payment and/or
 16 their class data changes, the estimated payment calculations will change accordingly.

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19 **Administration Costs**

20 5. As of the date of this declaration, KCC states its total cost of administration to date
 21 to be \$223,295.03. The costs account for the fax notice campaign, both paper notice campaigns,
 22 claims processing work, website hosting and setup as well as future funds management and
 23 distribution work. A copy of the current invoice to date has been filed under seal as it contains
 24 proprietary information regarding KCC's billing practices.

25 6. The federal annual tax reporting threshold is \$600.00.

26 7. If the claimants are paid their total settlement award assuming the numbers in
 27 paragraph 4 above, that payment would be more than the tax reporting threshold. Since these
 28 payments exceed the threshold, 1099 miscellaneous forms would need to be issued with the check

1 awards if a payment over \$600 is made in a particular tax year. To issue these tax documents,
2 KCC would need to solicit Tax ID's from the class members. This process would take
3 approximately three to four months according to the Scenario A found below.

4 8. Alternatively, KCC could make a first distribution of \$590.00 in 2019 and the
5 balance in a second distribution in 2020 which would also distribute residual funds from
6 uncashed checks from the first distribution as contemplated by the Agreement. This would avoid
7 the time and expense of the W-9 process for all of the class members who claimed one valid fax
8 number. In order to distribute prior to the end of the year, the Settlement Fund would need to
9 receive payment by December 2, 2019.

10 9. At the request of Class Counsel, KCC has prepared two cost to complete estimates
11 based on the following scenarios:

12 **Distribution Scenario A**

13 KCC is to mail W9 Solicitation Letters to all class members whose claims contained valid faxes
14 numbers. The class members will be given 30 days to respond to the letter. KCC will process any
15 letters received and verify the information provided by the class member. After the 30-day period,
16 KCC will prepare a list of the class members whose provided information was able to validate
17 and a separate list of class members who either did not respond or responded with invalid
18 information. The list of valid class members will be sent their full Settlement Amount while the
19 list of invalid or no response class members will be sent another W9 Solicitation Letter giving
20 them another 30-day response period. KCC will follow the same protocol established above to
21 determine if the information provided is valid or invalid and will generate the new lists. KCC will
22 then pay the valid list and will prepare the invalid and no response list for one final mailing
23 giving the class member one additional 30-day window to respond to the letter and follow the
24 established payment protocol. If after these three attempts the class member fails to provide a Tax
25 ID that matches with the IRS database, the funds will be returned to the general pool of funds and
26 be eligible for any residual distributions or cy pres payments. KCC estimates this Distribution
27 Scenario would cost \$281,894.92 to complete. An itemization of the Scenario A Cost to Complete
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1 has been filed under seal as it contains proprietary information regarding KCC's billing practices.
 2 Any residual distributions thereafter performed by KCC would be in addition to the cost listed
 3 above and would need to be reserved prior to further distributions occurring.

4 **Distribution Scenario B**

5 KCC will prepare a check distribution for all 6,851 class members who have submitted valid
 6 claims. This check distribution will occur in this taxable year in the amount of \$590.00. The
 7 residual amount due to the class member will be paid in the next taxable year. Along with the
 8 check packet, KCC will insert W9 Solicitation Letters for class members that have claimed two or
 9 more valid faxes. Class members will have a set determined time to cash their checks and respond
 10 to the W9 solicitation. KCC will validate the returned W9 and if the Tax ID does validate with the
 11 IRS database, the class member will be able to receive their entire allotment when the 2nd
 12 distribution occurs in the next taxable year. In the event the Tax ID does not validate, KCC will
 13 attempt to contact the class member to cure the deficiency prior to the second distribution
 14 occurring via the contact information collected in the letter. If KCC is unable to validate the Tax
 15 ID, the class member will receive \$590.00 again and the remainder of their award will return to
 16 the general pool of funds and be eligible for any residual distributions or cy pres payments. KCC
 17 estimates this Distribution Scenario would cost \$264,555.80 to complete. An itemization of the
 18 Scenario B Cost to Complete has been filed under seal as it contains proprietary information
 19 regarding KCC's billing practices. Any further residual distributions performed by KCC would be
 20 in addition to the cost listed above and would need to be reserved prior to the distribution
 21 occurring.

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 23 I declare under penalty of perjury under the laws of the United States that the foregoing is
 24 true and correct. Executed this 15th day of October, 2019 at Louisville, Kentucky.
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 27 
 28 ZACHARY COOLEY